

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #95-10**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

The taxability of oxygen monitors and anesthesia ventilators, as well as repair parts and maintenance service for the same.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

The taxpayer markets oxygen monitors and anesthesia ventilators to hospitals, doctors and government agencies. Oxygen monitors are used to monitor the level of oxygen

delivered to a patient during the administration of oxygen, as well as to monitor the oxygen level in the patient's blood. Although the device monitors the oxygen level, it does not administer oxygen. The most common part of the equipment, the oxygen sensor, requires routine replacement easily accomplished by the customer.

The anesthesia ventilators are used to ventilate the lungs by mechanically inflating and deflating the lungs during surgery to aid the patient to breathe during surgery. The ventilation of the lungs is the primary function of the device. The secondary function is to push oxygen through the patient's blood. These machines permit the patient to breathe when one is incapable of doing so on one's own. The device can be built into an anesthesia machine, or it can stand alone.

The taxpayer has inquired whether the two devices, the oxygen monitors and the anesthesia ventilators are taxable. The taxpayer also has inquired whether repair and maintenance services are taxable under the Tennessee Sales and Use Tax.

ISSUES

1. Whether the oxygen monitors and the anesthesia ventilators are exempt from Tennessee Sales and Use Tax?
2. Whether repair or maintenance on the oxygen monitors and the anesthesia ventilators are subject to the Tennessee Sales and Use Tax?

RULING

1. The sale of the oxygen monitor is taxable, unless sold to be used in conjunction with the administration of oxygen. The sale of an anesthesia ventilator is exempt from Tennessee sales tax under T.C.A. 67-6-314 as a prosthetic device.
2. The repair or maintenance services on the oxygen monitors and anesthesia ventilators are subject to Tennessee sales tax under T.C.A. 67-6-102(23)(F)(iv) if performed in Tennessee.

ANALYSIS

1. It is the declared legislative intent that every sale or use of tangible personal property in Tennessee is subject to the sales tax unless expressly exempted. *Shoppers Guide Publishing Co. v. Woods*, 547 S.W.2d 561 (Tenn. 1977). It should be kept in mind that an exemption statute must be narrowly construed against the taxpayer. *Commercial Equities Corp. v. Tollett*, 596 S.W.2d 801 (Tenn. 1980). At the same time, in construing the language of a statute, words are to be given their plain, ordinary and commonly understood meaning. *State v. Williams*, 690 S.W.2d 517 (Tenn. 1985).

Oxygen Monitor

T.C.A. 67-6-318 provides an exemption from Tennessee sales tax for sales of oxygen prescribed or recommended for the medical treatment of a human being by a licensed practitioner of the healing arts, and equipment necessary to administer such oxygen. Therefore, if the equipment is necessary for the administration of oxygen and sold in connection with the same, the equipment would qualify for purposes of the exemption.

From the facts presented by the taxpayer, the oxygen monitor does not administer oxygen, rather it monitors the oxygen level in the patient. The monitoring of oxygen, in and of itself, is not a function that would qualify for the exemption provided in T.C.A. 67-6-318. An oxygen monitor used only for diagnostic purposes of ascertaining the oxygen level in the patient's blood would not qualify for the exemption. If, however, the oxygen monitor is used to monitor oxygen while oxygen is being administered to the patient, such that the monitoring of the patient's oxygen level is a necessary part of the administration of oxygen, then that use would be within the exemption provided by T.C.A. 67-6-318.

An oxygen monitor purchased with the intent to use it in connection with the administration of oxygen is exempt from Tennessee Sales and Use Tax.

The determination of the tax liability should be based on the primary intended use of each oxygen monitor. See Tenn. Att'y Gen. Op. of July 3, 1984. If the device is sold to be used both in conjunction with the administration of oxygen, as well as to monitor the level of oxygen in the patient's blood, then one must determine the primary intended use of the device. If the device is to be used primarily in the administration of oxygen, then the device is exempt from sales tax under T.C.A. 67-6-318.

On the other hand, if the device is to be used primarily to monitor the oxygen in the blood, then the device is not exempt from sales tax.

Anesthesia Ventilator

The anesthesia ventilator is exempt from Tennessee sales tax under T.C.A. 67-6-314. This section provides an exemption from Tennessee sales tax for the sale of prosthetic devices. The scope of subsection (5), in regard to the devices within its purview, should be viewed in terms of whether the particular device augments or enhances limited or absent body functions for an improved quality of life. *Cordis Corp. v. Taylor*, 762 S.W.2d 138, 140 (1988),

The anesthesia ventilator mechanically inflates and deflates the lungs during surgery as the lungs normally do when a person breathes by himself. Therefore, in line with the reasoning of the courts and consistent with the Department's interpretation, devices which are used to aid a poorly operating general body function, substitute for a missing body part, or augment or enhance an impaired body part or function as the anesthesia ventilator does, would qualify for purposes of the exemption set out in T.C.A. 67-6-314(5).

2. The repair and maintenance services of both the oxygen monitor and the anesthesia ventilators are subject to the sales tax under T.C.A. 67-6-102(23)(F)(iv) if performed in Tennessee. "Retail sale," "sale at retail" and "retail sales prices" includes "the performing for a consideration of any repair services with respect to any kind of tangible personal property." Moreover, the sale in Tennessee of warranty contracts for the repair and/or maintenance of tangible personal property is also taxable under subsection (ix).

The Tennessee Supreme Court in *Serodino, Inc. v. Woods*, 568 S.W.2d 610 (Tenn. 1978), opined that repair services for tangible personal property were taxable even though the sales or use of the tangible personal property was otherwise exempt from the Tennessee Sales and Use Tax.

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APPROVED: Ruth E. Johnson
Commissioner

DATE: 3/30/95